

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7772

Joint Petition of Green Mountain Power Corporation                    )  
("GMP") and Vermont Electric Cooperative, Inc. ("VEC"),        )  
pursuant to 30 V.S.A. § 110-112, for authority to condemn        )  
easement rights in property interests of John and Debra A.        )  
Bevins, Westfield, Vermont, and Community National            )  
Bank, Derby, Vermont, for the purpose of constructing the        )  
46 kV transmission line portion of the so-called Kingdom        )  
Community Wind Project    )

Order entered: 12/6/2011

**ORDER OF DISMISSAL**

**I. REPORT**

On June 17, 2011, Green Mountain Power Corporation ("GMP") and Vermont Electric Cooperative, Inc. ("VEC," and collectively, "the Petitioners"), filed a joint petition with the Vermont Public Service Board ("Board") to request authority to condemn easement rights in property interests of John and Debra A. Bevins, Westfield, Vermont, and Community National Bank, Derby, Vermont, (collectively, "Landowners") for the purpose of constructing the 46 kV transmission line portion of the so-called Kingdom Community Wind Project. A prehearing conference in this Docket was held on September 22, 2011.

On November 16, 2011, the Petitioners filed a Notice of Dismissal under V.R.C.P 41(a)(1) or V.R.C.P. 41(a)(2) in this docket. The Petitioners stated that the Petitioners and Landowners had resolved the matter.

Petitioners contend this proceeding can be dismissed without action of the Board upon the filing of the notice of dismissal by the Petitioners under V.R.C.P 41(a)(1). The Petitioners

are correct that voluntary dismissal of an action is available to a plaintiff as a matter of right in civil actions under V.R.C.P. 41(a)(1) before an adverse party serves an answer or a motion for summary judgment.<sup>1</sup> However, because of the differences between Board proceedings and civil actions in state courts, the Board has had to adapt and interpret the Vermont rules of civil procedure in a manner consistent with the needs of its own proceedings and the purposes underlying the rules of civil procedure. As the Petitioners are aware, non-petitioning parties are generally not required to file responses to petitions before the Board, so the Board has had to interpret how the V.R.C.P. 41(a)(1) limitations on dismissal as of right should be applied to its own proceedings.<sup>2</sup> Under Board precedent, it is not clear that voluntary dismissal under V.R.C.P. 41(a)(1) is available in this proceeding because a prehearing conference has already been held.<sup>3</sup>

Consequently, the Board needs to determine whether an order of dismissal pursuant to V.R.C.P. 41(a)(2) is appropriate under the circumstances. Because it appears that the only prejudice arising from dismissal of this petition would be to the parties seeking condemnation (namely, GMP and VEC) and those parties are now requesting the dismissal, I conclude that the petition for condemnation may be dismissed and this docket closed.

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1. Voluntary dismissal as a matter of right would also be available by the filing of a stipulation of dismissal signed by all parties who have appeared in the proceeding under Rule 41(a)(1)(ii). Although Petitioners report that they have reached a settlement with Landowners, the notice of dismissal was signed only on behalf of the Petitioners.

2. Under V.R.C.P. 12, an answer to a complaint in a civil action is generally required within 20 days of the service of the complaint, at which point dismissal as of right would be unavailable to a plaintiff without the consent of the adverse parties. As applied to the typical Board proceeding, the question is at what point in the proceeding does the Petitioner forego the opportunity to dismiss the proceeding by notice as a matter of right given that the Board's procedures generally do not require the filing of a response to a petition. Board precedent suggests that point is once another party has taken visible steps to engage in the proceeding and to commit some of its time and resources to the proceeding (whether by filing a response or appearing at a prehearing conference).

3. See, for example, Docket 7397 (Order of 11/13/08); Docket 7419 (Order of 5/21/09); Docket 7773 (Order of 10/26/11); Docket 7776 (Order of 10/19/11); Docket 7777 (Order of 11/10/11).

This decision is not adverse to the interest of any party, so it need not be circulated to the parties pursuant to 3 V.S.A. § 811. This report is made to the Public Service Board pursuant to 30 V.S.A. § 8.

Dated at Montpelier, Vermont, this 1<sup>st</sup> day of December, 2011.

*s/ Lars Bang-Jensen*  
Lars Bang-Jensen  
Hearing Officer

**II. ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The Report of the Hearing Officer is accepted.
2. The motion for dismissal is granted.
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of December, 2011.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: December 6, 2011

ATTEST: s/ Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*